

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DELANE SIMS,
Plaintiff,

Case No. 10-10379
HON. BERNARD A. FRIEDMAN

vs.

COMMISSIONER OF SOCIAL SECURITY,
Defendant.

**OPINION AND ORDER ADOPTING REPORT AND RECOMMENDATION
GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND DENYING
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

This matter is before the Court on Magistrate Judge Donald A. Scheer's Report and Recommendation ("R and R") dated August 5, 2010 recommending the granting of Defendant's motion for summary judgment and denying Plaintiff's motion for summary judgment. Plaintiff filed an objection, and Defendant filed a response. This Court had an opportunity to fully review this matter and believes that the Magistrate Judge has reached the correct conclusions for the proper reasons.

As the R and R noted, the issue for review is whether Defendant's denial of benefits was supported by substantial evidence on the record. Richardson v. Perales, 402 U.S. 389, 401 (1971). Further, as noted in the R and R, if the Commissioner's decision is supported by substantial evidence, it must be affirmed even if substantial evidence also supports the opposite conclusion, Mullen v. Bowen, 800 F.2d 535, 545 (6th Cir. 1986), and even if the reviewing court would decide the matter differently. Kinsella v. Schweiker, 708 F.2d 1058, 1059 (6th Cir. 1983).

Plaintiff objects to the Magistrate Judge's recommendation that there is substantial

evidence on the record to support the Commissioner's finding that she could perform a restricted range of sedentary work. In support of her argument, Plaintiff points to the testimony of a vocational witness who stated that all work would be precluded if Plaintiff's testimony was fully accepted. Plaintiff contends that the ALJ failed to properly assess Plaintiff's credibility about her limitations and abilities. However, this Court does not decide questions of credibility.

Brainard v. Secretary, 889 F.2d 679, 681 (6th Cir. 1989). Findings of credibility made by the ALJ are relied upon by this Court, as the ALJ, having personally met with and observed Plaintiff, is in the best position to make such findings. As the ALJ decided not to fully accept all of Plaintiff's testimony, based on a credibility finding, the Court will adhere to such decision.

Plaintiff's remaining arguments are without merit. Contrary to Plaintiff's contention, Plaintiff's mental difficulties were reasonably accommodated through the ALJ's limitation to simple, routine and repetitive tasks. The ALJ's ruling was based on medical evidence of Plaintiff's treating doctor and other examining physicians. As there is substantial evidence on the record supporting such conclusion, this Court will affirm it. Further, Plaintiff's arguments regarding whether the ALJ is bound by the finding of a state agency is superfluous. Regardless of whether or not the state agency applies a different standard than the Social Security Administration when granting a state disability benefit, the conclusion that the ALJ is not bound by the disability finding of a state agency is correct.

ACCORDINGLY:

IT IS HEREBY ORDERED that Magistrate Judge Donald A Scheer's Report and Recommendation dated August 5, 2010, is hereby accepted and adopted.

IT IS FURTHER ORDERED Defendant's Motion for Summary Judgment be

GRANTED.

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment be
DENIED.

Dated: September 1, 2010
Detroit, Michigan

_____/s/Bernard A. Friedman_____
BERNARD A. FRIEDMAN
UNITED STATES DISTRICT JUDGE